

Testimony of Bill Lann Lee  
Before the Subcommittee on the Constitution  
United States House of Representatives  
March 8, 2006

Good afternoon, Chairman Chabot and members of the House Subcommittee on the Constitution. I am Bill Lann Lee, a partner at the law firm of Lief, Cabraser, Heimann & Bernstein, LLP and former Assistant Attorney General for Civil Rights. I am here today in my capacity as Chairman of the National Commission on the Voting Rights Act. On October 18, 2005, Commissioner Joe Rogers informed this Subcommittee in its first oversight hearing on the Voting Rights Act, about the National Commission's then-forthcoming Report.

Today, the Subcommittee has invited Commissioner Rogers and me to testify about the National Commission's Report, "*Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005*," and the Supplement to the Report "*Highlights of Hearings of the National Commission on the Voting Rights Act, 2005*." The Report and Supplement can be found on the Commission's website, [www.votingrightsact.org](http://www.votingrightsact.org). Pursuant to the written request of Chairman Sensenbrenner, the National Commission has provided to the Judiciary Committee its entire record of several thousand pages.

The National Commission was created by the Lawyers' Committee for Civil Rights Under Law, in conjunction with the civil rights community. The National Commission is composed of a politically and ethnically diverse group of men and women, including former elected and appointed public officials, scholars, lawyers, and leaders. Along with Commissioner Rogers and I, the Commissioners are Honorary Chair Charles Mathias, John Buchanan, Chandler Davidson, Dolores Huerta, Elsie Meeks, and Charles Ogletree.

The National Commission's charge was to evaluate discrimination in voting since Congress reauthorized the temporary provisions of the Voting Rights Act in 1982. These temporary provisions, which will expire on August 6, 2007, unless renewed, provide for federal oversight of election-process changes, contained in Section 5; minority language assistance to citizens whose primary language is not English, contained in Sections 4(f)(4) and 203; and authority for the Attorney General to send observers and examiners to monitor elections, contained in portions of Sections 6-9 and 13. These provisions only apply to those areas of the country where Congress previously determined they were needed.

The National Commission obtained all the relevant qualitative and quantitative data it could on discrimination in voting, including data from the U.S. Department of Justice; federal court cases and dockets; and information from numerous civil rights organizations, voting rights lawyers, academics and electoral experts who provided counsel or made their files available. Moreover, the National Commission conducted ten hearings throughout the country and heard from more than 100 witnesses with experience in elections or voting rights issues, including local election administrators. The National Commission's report reflects the analysis of all that evidence. Although this effort reflected the input of the entire Commission, I wish to acknowledge that Commissioner Davidson, perhaps the preeminent social scientist in the field of voting rights, worked fulltime for more than a year on this effort.

The evidence demonstrates unfortunately that the persistence, degree, geographic breadth, and methods of voting discrimination are substantial and ongoing. The voting discrimination that Congress intended to eliminate by enacting and reauthorizing the Voting Rights Act has held steady. The temporary provisions of the Act, in fact, have prevented and remedied such discrimination. They continue to do so to this day.

I will share some of the numerical findings set forth in the Report and the Report's tables, maps, and charts.

Regarding Section 5 enforcement since 1982, the District Court of the District of Columbia, and the Justice Department, together, refused to preclear over 1,100 voting changes contained in more than 650 Section 5 submissions since 1982. In addition, as a result of the correspondence between the Justice Department and a jurisdiction after a submission was made by that jurisdiction, more than 200 jurisdictions withdrew proposed changes before the Department made its determination to preclear or object. These withdrawals have the same functional effect as an objection blocking a suspect voting change. In addition, the Act allows either the Justice Department or private citizens to bring Section 5 enforcement actions to force officials to submit changes they have failed to submit. Our research revealed that in eight of the nine totally covered States, plus North Carolina, there were no less than 105 successful enforcement actions filed since 1982.

The Department of Justice has sent observers to monitor elections in more than 600 jurisdictions since 1982. Two-thirds of all post-1982 observer coverages occurred in five states, covered entirely by Section 5 since 1965: Louisiana, Alabama, Mississippi, Georgia and South Carolina. Between 300 and 600 observers were sent out each year between 1984 and 2000.

Regarding language minorities, we note that there remains an enormous gap in political participation. According to the Census, in the 2000 election, 45 percent of Hispanic voting age citizens and 43 percent of Asian voting age citizens participated, as compared to 62 percent of non-Hispanic white voting age citizens.

Section 2 is a permanent feature of the Act that permits the United States or affected voters to file suits alleging that a voting practice has a discriminatory purpose or result. By

tabulating the number of Section 2 suits resolved favorably to minority voters, it is possible to gain a better understanding of how common and how geographically widespread is minority vote discrimination. The Commission's analysis of both reported and unreported successful Section 2 cases in nine states alone, eight states fully covered by Section 5 and North Carolina, found 635 successful cases affecting election structures or procedures in 825 counties.

In many areas of the country, voting continues to be racially polarized – most whites vote for different candidates than minority voters. This overwhelming pattern means that minority voters usually cannot elect candidates of choice unless they are a majority or near majority of the electorate. Because of racially polarized voting, a new voting procedure that harms minority voters increases the likelihood that minority preferred candidates will lose. The Commission found 23 cases in 16 states since 1982 where courts found racially polarized voting in statewide redistricting cases. A study by the Voting Rights Initiative at the University of Michigan of reported Section 2 cases found that 91 federal courts found racially polarized voting in jurisdictions nationwide since 1982.

In his testimony, Commissioner Rogers will be providing examples that illustrate the statistics I just provided.